



PATENT  
Customer No. 22,852  
Attorney Docket No. 05552.1464-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
Udo KRUPKA ) Group Art Unit: 1648  
Application No.: 10/561,343 ) Examiner: Sharon L. Hurt  
Filed: December 22, 2005 )  
For: NOVEL SURFACE PROTEIN ) Confirmation No.: 5936  
(HBsAg) VARIANT OF THE )  
HEPATITIS B VIRUS )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**RESPONSE TO RESTRICTION REQUIREMENT**

In a restriction requirement dated August 11, 2006, the Office required restriction, under 35 U.S.C. §§ 121 and 372 and PCT Rule 13.1, between:

Group I: claims 24-35 and 41, which the Office states are "drawn to an oligopeptide or polypeptide comprising an amino acid sequence, a composition comprising one or more oligopeptide or polypeptide, a method of preparing the oligopeptide or polypeptide, and a method of using the oligopeptide or polypeptide for detecting a hepatitis B antigen;"

Group II: claims 36-37, "drawn to an antibody which binds the oligopeptide or polypeptide;"

Group III: claim 39, "drawn to an antiidiotypic antibody;"

Group IV: claim 40, "drawn to a kit for detecting hepatitis B viruses;" and  
Group V: claim 42, "drawn to a method of identifying antibodies directed against  
hepatitis B antigen."

Applicant provisionally elects, with traverse, to prosecute Group I, claims 24-35  
and 41.

The Office also required an election of species and an identification of the claims  
encompassing the election. Applicant provisionally elects, with traverse, SEQ ID  
NO:12, which may be found at page 32 of the instant application. That sequence is  
specifically recited in claims 28, 29, and 31, and claims 24-25, 28-35, and 41  
encompass that elected sequence.

Applicant traverses this restriction and election requirement because all of the  
instant claims are "so linked as to form a single general inventive concept" according to  
PCT Rule 13.1, and because claims 24-42 all contain "the same or corresponding  
special technical features" under PCT Rule 13.2, and therefore possess the required  
technical relationship for unity of invention. Specifically, each of dependent claims 36-  
37, 39, 40, and 42, which form Groups II-V, encompasses and further limits the  
oligopeptides and polypeptides of claims 24, 26, 28, 29, and 31 of Group I.

Moreover, each of claims 36-37, 39, 40, and 42 representing Groups II-V are  
dependent claims, which depend from claims within Group I. According to PCT Rule  
13.4 and the policy of PCT Annex A of the M.P.E.P., at Part I, Section (c)(i), dependent  
claims that contain all of the features of the independent claims should be included in  
the same group, even if the dependent claims contain a further invention. Claims 36-  
37, 39, 40, and 42 each satisfy that policy as they rely upon the oligopeptides and

polypeptides claimed in claims 24, 26, 28, 29, and 31 of Group I. Moreover, if the oligopeptides and polypeptides of claims 24, 26, 28, 29, and 31 are novel and nonobvious, it follows by simple logic that their antibodies would also be novel and nonobvious, as would kits and methods making use of them. Thus, at the very least, Applicant requests the Office to rejoin all of claims 36-37, 39, 40, and 42 to the application upon allowance of the subject matter of elected Group I. Claim 42 may also be rejoined according to the policy of PCT Annex A, Part I, Section (e), of rejoining methods of use and manufacture of an elected composition claim.

Applicant also notes that it is the Office's general policy that "[i]f the search and examination of the entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (M.P.E.P. § 803; emphasis added.) In this case, there is no serious burden on the office in examining all of the instant claims together because they all incorporate the subject matter of Group I. Because all of the claims of Groups II-V are dependent on claims in Group I, a search based on the subject matter of Group I would be sufficient for all of Groups II-V as well.

Finally, as to the election requirement, Applicant notes that it is not necessary as a search may be made on the overall scope of claims 24-35 and 41 without undue burden. In any event, Applicant expects that once the Office finds the elected species novel and nonobvious, the Office will continue the search under its policy of M.P.E.P. § 803.02.

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The present response is accompanied by a Petition for a One-Month Extension of Time until October 11, 2006, and fee payment of \$120.00.

Please grant any extensions of time required to enter this response and charge any required fees that are not found herewith to deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: September 18, 2006

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